One Court of Justice
MICHIGAN SUPREME COURT
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FOR IMMEDIATE RELEASE

MICHIGAN SUPREME COURT TO HEAR ORAL ARGUMENTS IN FREEDOM OF INFORMATION ACT DISPUTE NEXT WEEK

LANSING, MI, March 8, 2002 – **A dispute over whether the Freedom of Information Act requires a city police department to disclose internal investigations documents (*Federated Publications* v. *City of Lansing*) will be heard by the Michigan Supreme Court in oral arguments next week.**

The Court will also hear arguments in a child custody action (*Molloy* v. *Molloy*), a wrongful death suit involving employer liability (*Rogers* v. *J. B. Hunt*) and three other cases.

Court will be held **March 13 and 14** in the Supreme Court Room on the second floor of the G. Mennen Williams (a/k/a Law) Building. Court will convene at **9:30 a.m.** each day. **However, on March 14, the Court will hold a public hearing before oral arguments. Accordingly, oral arguments in *Molloy* v. *Molloy* will take place after 12:30 p.m.**

(*Please note: The summaries that follow are brief accounts of complicated cases and might not reflect the way in which some or all of the Court's seven Justices view the cases. The attorneys may also disagree about the facts, the issues, the procedural history, or the significance of their cases. For further details about these cases, please contact the attorneys.*)

Wednesday, March 13

BARAGA COUNTY v. STATE TAX COMMISSION
Attorneys for plaintiffs Baraga County, Baraga Township, L'anse Township, Rosemary Haataja, and Amy St. Arnold: D. Gregor MacGregor, John W. Windhorst/906.486.9982
Attorney for defendant State Tax Commission: Ross H. Bishop/517.373.3203
At issue: Can local governments settle tax disputes with property owners by agreeing to take property off the tax rolls – without the consent of the State Tax Commission? The answer could affect many parcels of land in Michigan.
Background: Plaintiffs Rosemary Haataja and Amy St. Arnold are members of the Keweenaw

Bay Indian Community (KBIC), a federally recognized Indian tribe with a reservation located in Baraga County. Haataja resides in L'anse Township; St. Arnold resides in Baraga Township.

In 1992, Haataja and St. Arnold, along with many other tribal members who owned property in those two townships, objected to the proposed sale of their land at the annual tax sale. They claimed that Michigan lacked jurisdiction to tax land located within the reservation. In 1994, the townships and KBIC members settled the dispute through a consent judgment entered by the Tax Tribunal. Under the consent judgment, the townships agreed to remove the tribal members' property from the tax rolls. A second "tribal" roll was created; properties on the tribal roll were assessed as any other properties in the townships, except that the bills were sent to the KBIC instead of the individual property owners. The KBIC would then make a payment in lieu of taxes for the full amount of tax that would be due if the property were owned by a non-tribal member and placed on the tax rolls.

In 1999, however, the Michigan State Tax Commission ordered the townships' tax assessor to place the tribal properties back on the tax rolls. The Commission asserted that property located on Indian reservations and owned by Indian tribes or their members was subject to taxation by the State of Michigan – regardless of any agreements between Indian tribes and local units of government. The plaintiffs filed suit in Baraga Circuit Court in February 1999 to enforce the 1994 agreement. The Tax Commission argued that the 1994 consent judgment could not be enforced because neither the Tax Commission nor the State of Michigan was a party to the 1992 suit. But Baraga Circuit Court Judge John D. Payant ruled that the State Tax Commission was bound by the 1994 consent judgment. The Court of Appeals affirmed. The State Tax Commission appeals.

STATE FARM FIRE & CASUALTY v. OLD REPUBLIC INSURANCE
Attorney for plaintiff State Farm: Stacey L. Heinonen/248.356.8590
Attorney for defendant Old Republic Insurance: James R. Stegman/248.540.4665
At issue: Where a business owner had an accident with a rented vehicle that resulted in thousands of dollars in damage to his own property, which insurance company must cover the damage – the insurer for the business property, or the company that provided no-fault auto insurance to the rental company?
Background: Ibrahim Mroue, while operating a rented truck, had an accident that caused $61,879.81 worth of damage to real and personal property at Mroue's business. State Farm, the insurance company for Mroue's business, paid for the damage. State Farm then sued Old Republic Insurance, the rental company's no-fault auto insurer. State Farm argued that Old Republic should reimburse State Farm for the money paid to Mroue. Old Republic moved to dismiss the suit, citing Michigan's no-fault insurance law's "household exclusion." The household exclusion provides that, where an individual owning, registering, or operating a motor vehicle damages property which that same individual owns, a no-fault insurer will not be responsible to pay for the damage. The Legislature intended to shift the burden for such a loss to the household or general liability carrier rather than to the no-fault carrier, Old Republic argued. Wayne County Circuit Judge Paul S. Teranes agreed that the household exclusion applied and dismissed State Farm's suit. The Court of Appeals reversed, stating that the household exclusion did not apply because Mroue was not a named insured on the rental company's no-fault policy. In

a later opinion in the same case, the Court of Appeals rejected Old Republic's argument that, because Mroue was "a person named in a property protection insurance policy," the household exclusion barred him from seeking coverage from the no-fault insurer. Old Republic appeals.

ROGERS v. J.B. HUNT TRANSPORT

Attorney for plaintiff Alfonso E. Rogers, personal representative of the Estate of Daimon Ja'von Rogers, deceased: George T. Sinas/517.394.7500

Attorney for defendant J.B. Hunt Transport: Joseph H. Hickey/248.203.0700

At issue: Under Michigan law, an employer is responsible for its employee's negligence if the employee committed the negligent act within the scope of employment. In this case, a truck driver who is a defendant in a wrongful death suit failed to cooperate with discovery; a default judgment, including a finding that the driver was negligent, was entered against him. Can the plaintiff use that default judgment to establish the employer's liability – and financial responsibility – for the accident?

Background: In 1996, J.B. Hunt, a trucking company, employed Wesley Howard Crenshaw as a truck driver. On June 17, 1996, Crenshaw parked a tractor-trailer owned by Hunt on the north shoulder of westbound I-96. Daimon Ja'von Rogers died when his vehicle left the paved highway and collided with the tractor-trailer on the shoulder. Plaintiff Alfonso Rogers, as personal representative of Daimon Rogers' estate, sued Hunt and Crenshaw in Eaton County Circuit Court. Rogers claimed that Crenshaw was negligent, that his negligence was the proximate cause of Daimon's death, and that Hunt was vicariously liable for Crenshaw's negligence. In their answers to the complaint, Hunt and Crenshaw admitted that Crenshaw was employed by Hunt and that he was acting within the scope of his employment when the accident occurred. Hunt also terminated Crenshaw's employment. Crenshaw did not appear for his deposition, failed to cooperate with discovery in the case, and did not respond to attempts to contact him. The plaintiff moved for a default judgment against Crenshaw, which was granted by Eaton County Circuit Judge Calvin T. Osterhaven. Ultimately, the judge ruled that the default had the effect of establishing Crenshaw's negligence. Because both Hunt and Crenshaw admitted that Crenshaw was employed by Hunt and acting within the scope of his employment during the accident, Hunt was liable for Crenshaw's negligence, the judge stated. Moreover, because of the default judgment, Hunt could not argue that Crenshaw was not negligent, the judge concluded. The Court of Appeals affirmed. Hunt appeals.

NOWELL v. TITAN INSURANCE

Attorney for plaintiff Martin A. Nowell: James E. Yavorik/419.243.7243

Attorney for defendant Titan Insurance Company: Mark J. Zausmer/248.851.4111

Attorney for amicus curiae Insurance Information Association of Michigan: Steven G. Silverman/313.963.8200

At issue: This dispute concerns whether a driver received notice that his auto insurance policy was going to be cancelled. The driver testified that he did not receive the notice until after an auto accident in which his passenger was injured, which took place about 16 hours after the policy was cancelled. Where the insurance company could not prove that the driver did see the

notice before the accident, did the judge properly enter a judgment that the insurer had to provide coverage for the accident? Should the issue of the driver's credibility have been left for a jury to decide?

Background: On December 4, 1996, Duane Isley purchased automobile insurance from Titan Insurance for his 1987 Ford pick-up. When Isley failed to pay the full amount of the premium, Titan sent by regular mail a notice of cancellation on February 20, 1997. The notice was mailed to Isley's parents' home, where he lived. The cancellation was effective March 5, 1997 at 12:01 a.m. standard time. On March 5, 1997, at approximately 8:30 p.m., Isley was involved in a single car roll-over accident in Ohio. His passenger, Martin Nowell, was injured. Isley was arrested and jailed for failing to have a valid driver's license. After he was released from jail, Isley went to his insurance agency on March 11 to change his policy, removing the pick-up and adding another vehicle. He did not tell the agency of the accident, but submitted a check for the balance of the premium. The insurance agent made the requested changes and noted on the change request form that the policy was reinstated as of that date.

When Nowell sued for his injuries, Titan moved to dismiss the lawsuit. Titan argued that it was not liable to Nowell because Isley's policy had lapsed. But Nowell cited a deposition Isley gave in another lawsuit, in which Isley testified that he did not receive a cancellation notice until "at least two weeks" after his release from jail. Under Michigan law, an insurer is required to mail a cancellation notice not less than 10 days before the cancellation. Michigan case law also states that the insured person must receive actual notice before the cancellation becomes effective. Oakland County Circuit Judge Alice L. Gilbert stated that Titan had not shown that Isley did receive the cancellation notice before the accident. Accordingly, the judge denied Titan's motion and entered judgment in Nowell's favor. Titan moved for reconsideration, presenting affidavits from Isley and his parents that indicated that Isley might have received the notice but ignored it. The Court of Appeals affirmed. Titan appeals.

FEDERATED PUBLICATIONS v. CITY OF LANSING

Attorney for plaintiff Federated Publications: Charles E. Barbieri/517.371.8155
Attorney for defendant City of Lansing: Mary Massaron Ross/313.983.4801
Attorney for intervening defendants Capitol City Lodge No. 141 of the Fraternal Order of Police Labor Program, Inc., and Jane Doe and John Doe: Steven T. Lett/517.372.4204
At issue: Should the City of Lansing disclose files related to internal Police Department investigations in response to a newspaper's Freedom of Information Act request?

Background: Federated Publications, which publishes the Lansing State Journal, made a request under the Freedom of Information Act (FOIA) to the City of Lansing in January 1998. The Journal sought "any reports or other documents regarding complaints investigated by the Lansing Police Department Internal Affairs Bureau" for 1997. The City denied most of the request, stating that the documents were exempt from disclosure under FOIA. The newspaper sued. Ingham County Circuit Judge Peter Houk ruled that the city would be required to disclose files regarding citizen-initiated investigations. However, the City of Lansing did not have to disclose documents concerning internally generated investigations by the Police Department, the judge stated. Ultimately, the Court of Appeals held, in an unpublished opinion, that the newspaper was also entitled to records of internally generated investigations. On appeal to the Supreme Court,

the City of Lansing argues that the internal investigation documents are "personnel files" that should be exempt from disclosure. Making that information public would discourage citizens and city employees from cooperating with internal investigations, the City contends. The newspaper argues that the public has an interest in the records since they bear on how well the City's investigation process works. The public's interest in disclosure outweighs any interest in non-disclosure, the newspaper claims. The police union, which has intervened as a defendant in the case, points out that Michigan's Employee Right to Know Act prevents an employee who is the subject of an internal investigation from gaining access to investigation records. It makes no sense to interpret FOIA to allow newspapers to obtain access to this information, when even the employee who was the target of the investigation could not get the information, the union argues. The union also contends that the records are internal communications of a government agency, and are therefore exempt from disclosure. The union further argues that disclosing the documents would violate individual police officers' privacy.

Thursday, March 14
[after 12:30 p.m.]

MOLLOY v. MOLLOY
Attorney for plaintiff Peter Molloy: James A. Gray/313.325.7000
Attorney for defendant Wendy Molloy: Judith A. Curtis/313.882.8116
At issue: A judge interviewed a child alone off the record, and relied on the interview in making the custody decision. Should the judge have relied on the interview only to establish the child's preference about custody?
Background: Under Michigan law, judges making child custody decisions must consider the "best interests of the child," using a 12-factor analysis. One of the factors is "[t]he reasonable preference of the child, if the court considers the child to be of sufficient age to express preference...." The statute does not state how a judge should determine a child's preference. Michigan case law has established an *in camera* approach, with the judge interviewing the child alone off the record about the child's preference.

Peter and Wendy Molloy separated after nine years of marriage. Plaintiff Peter Molloy sued for divorce and sought custody of the couple's son, Casey. Casey spent some time living with defendant Wendy Molloy. Ultimately, Wayne County Circuit Judge Sheila Gibson Manning ruled that, even though Casey had an established custodial environment with his mother, Casey's best interests required changing custody to Peter Molly. In an *in camera* interview, Casey told the judge that he missed his father helping him with schoolwork. Casey also told the judge about an incident in which Casey threatened to commit suicide if his mother did not stop talking about his father. The judge indicated that the incident played a part in the decision to change custody. On appeal, Wendy Molloy claimed that the judge erred in using what Casey said during the interview to decide factors other than preference. Ultimately, the Court of Appeals agreed, adding that *in camera* interviews could violate parents' due process rights. The court stated that *in camera* interviews must be limited to the issue of child preference and that, in the future, all such interviews must be recorded and sealed for appellate review. Peter Molloy appeals.

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